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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/587,343

07/25/2006

Bin Xing

4219574

6604

8791

7590

04/04/2008

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EXAMINER

ELLIS, KEVIN L

ART UNIT

PAPER NUMBER

2188

MAIL DATE

DELIVERY MODE

04/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/587,343	<b>Applicant(s)</b> XING ET AL.	
	<b>Examiner</b> Kevin L. Ellis	<b>Art Unit</b> 2188	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 is/are allowed.
- 6) ☒ Claim(s) 13-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/21/06</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

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**Detailed Action**

1. Claims 1-29 are presented for examination.
2. Information disclosed and listed on PTO 1449 has been considered.

***Claim Rejections – 35 USC § 101***

3. In claims 13-29, Applicant sets forth a "machine accessible medium." In supporting this language in the specification, Applicant sets forth in paragraph 47 that a machine accessible medium includes "communications media such as antennas, wires, optical fibers, microwaves, radio waves, and other electromagnetic or optical carriers." Therefore, giving claim 13 a reasonable interpretation consistent with the specification, a "machine accessible medium" could embody communications media.
4. However, communications media, such as those set forth by the Applicant in the specification, are not tangible. A communication medium, such as antennas, wires, optical fibers, microwaves, radio waves, or other electromagnetic or optical carriers, cannot tangibly embody a computer program or process since a computer cannot understand/realize (i.e. execute) the computer program or process when embodied on the communication media. Computer programs or processes are only realized within the computer when stored in a memory or storage element (such as RAM or ROM). Therefore, a communication media does not meet the "useful, concrete, and tangible" requirement as set forth in *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02, and hence claims 13-20 are not statutory under 35 U.S.C. 101.
5. Applicant may consider changing "machine accessible medium" of claim 13 line 2 to "machine accessible medium comprising a storage media", and changing "in the machine

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accessible medium" of claim 13 line 3 to "in the storage media". Similar changes can be made to claim 21.

*Allowable Claims*

6. Claims 1-12 are allowed.

*Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin L. Ellis whose telephone number is 571-272-4205. The examiner can normally be reached on weekdays from 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on 571-272-6799. The fax phone numbers for the organization where this application or proceeding is assigned is 571-272-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

/Kevin L. Ellis/  
Primary Examiner  
April 4, 2008